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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,762	08/03/2001	Justin M. Smyers	RPC 0575 PUS	8756

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/29/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

# Office Action Summary

Applicati n N .

09/921,762

Applicant(s)

SMYERS ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE f this communication appears on th c ver sheet with the correspondence address --

## Peri d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_ .
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 25-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 25-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Pri rity under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_ .  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ . 6) ☐ Other: \_\_\_\_ .

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 32-38 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by the admitted prior art in Fig. 1 and appropriate sections of the specification which describe prior art (the admitted prior art).

The admitted prior art discloses a stackable crate comprising:

a side wall integrally formed with a bottom surface, the side wall formed so that at least a portion of an opening in the crate at a first distance from the bottom surface (distance almost to top edge of side wall where the angle surface 18 is present) has a larger dimension than the bottom surface; and

a drag rail (16) formed on the underside portion of the bottom surface and positioned inward of an outer peripheral support surface (shoulder 20) of the crate, the side wall formed so that a top surface of the side wall would contact the outer peripheral support surface of a like crate stacked thereon,

wherein a portion of an inner surface of the side wall at the first distance from the bottom surface is formed to reduce the dimension of the crate opening (the inner surface at the first distance is greater than the bottom inside surface and less than the crate opening at the top edge of the side wall) in at least one selected area so as to provide a tighter fit with a drag rail of the like crate stacked thereon.

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Although Fig. 1 discloses only one crate, this one crate is inherently capable and is specifically constructed to stack with identical crates

Claims 7, 9-11 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. ('532) (Apps 2).

Apps 2 discloses a stackable crate comprising:

a side wall integrally formed with a bottom surface; and

a drag rail (one of the rails at the bottom periphery of the crate, redoubt members 66, 68 and redoubt struts 70, 72) protruding from an underside portion of the bottom surface, the drag rail including a drag surface that is the lowermost surface of the crate, wherein an inner surface of the side wall is formed to position at least a portion (reinforcing posts 79) of the side wall over the drag rail.

For claims 9 and 11, the corner is defined such that it includes at least two reinforcing posts and corresponding drag rails, wherein each reinforcing post extends over its corresponding drag rail. *insert*

For claim 10, Fig. 1 discloses that the side walls have fillets at their connection with the bottom surface forming an inwardly extending taper.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 32-38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art.

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This rejection is made in the event that it is deemed that claims 1-4, 32-38 and 40 are not anticipated by the admitted prior art.

The admitted prior art discloses the invention except for the stacking of two crates. It would have been obvious to stack two crates in order to more efficiently use floor space by storing a plurality of crates in the space occupied by one crate.

Claims 5, 6 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Wise.

The admitted prior art discloses the invention except for the at least one selected area is entirely tapered rather having a portion without taper, a portion with reduced taper, or a portion angled less outwardly. Wise teaches a stackable crate with a side wall formed so that a portion of an opening at a first distance from the bottom surface (an upper wall portion) has a larger dimension than the bottom surface, wherein a portion of an inner surface of the side wall at the first distance from the bottom surface is formed to reduce the dimension of the crate opening in at least one selected area, the one selected area including tapered areas 77, 79, 81, 83, 85, 87, 89 and 91 and portions without taper between and circumferentially spaced from the tapered areas. The portions without taper are considered portions with reduced taper and portions angled less outwardly. Also consider the corners 55, 57, 59 and 61 have upper portions at the first distance from the bottom surface which include portions of reduced outward taper and portions angled less outwardly rather than zero taper. It would have been obvious to modify the crate of the admitted prior art to include the upper wall portion configuration of Wise in order to reinforce the upper edge of the crate's wall to prevent buckling which could cause crate alignment problems, stack instability and breakage or damage of crates and/or contents.

Claims 8 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 2 in view of Elvin-Jensen.

Apps 2 discloses the invention except for the variable radius blend. Elvin-Jensen teaches a variable radius blend (areas of no radius where wall is planar to areas where there is a radius) between portions near the middle of a side wall where the inner side wall surface meets the bottom surface and greater radii of portions near the corners that connect side walls where the inner side wall surface meets the bottom surface (see Fig. 1, 2, 3 and 9). It would have been obvious to add the variable radius blend in order to make manufacturing easier since the larger radii near corner portions improve the releasability of the corner portion from male molds and these larger radii corner portions reduce the trapping of dirt and debris in these corner portions to enhance hygiene and cleanliness.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 2 in view of Wise.

Apps 2 discloses the invention except for the side wall being formed to reduce the dimension of the crate opening in at least one selected area. Wise teaches a stackable crate with a side wall formed so that a portion of an opening at a first distance from the bottom surface (an upper wall portion) has a larger dimension than the bottom surface, wherein a portion of an inner surface of the side wall at the first distance from the bottom surface is formed to reduce the dimension of the crate opening in at least one selected area, the one selected area including tapered areas 77, 79, 81, 83, 85, 87, 89 and 91 and portions without taper between and circumferentially spaced from the tapered areas. The portions without taper are considered portions with reduced taper and portions angled less outwardly. Also consider the corners 55,

57, 59 and 61 have upper portions at the first distance from the bottom surface which include portions of reduced outward taper and portions angled less outwardly rather than zero taper. It would have been obvious to modify the crate of Apps 2 to include the upper wall portion configuration including upper wall portions of the corners of Wise in order to reinforce the upper edge of the crate's wall to prevent buckling which could cause crate alignment problems, stack instability and breakage or damage of crates and/or contents.

Claims 34, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Elvin-Jensen.

The admitted prior art discloses the invention except for the variable radius blend. Elvin-Jensen teaches a variable radius blend between portions near the middle of a side wall where the inner side wall surface meets the bottom surface and greater radii of portions near the corners that connect side walls where the inner side wall surface meets the bottom surface. It would have been obvious to add the variable radius blend in order to make manufacturing easier since the larger radii near corner portions improve the releasability of the corner portion from male molds and these larger radii corner portions reduce the trapping of dirt and debris in these corner portions to enhance hygiene and cleanliness.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc  
July 23, 2003